

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

ALVIN BALDUS, CARLENE BECHEN,
ELVIRA BUMPUS, RONALD BIENDSEIL,
LESLIE W DAVIS III, BRETT ECKSTEIN,
GLORIA ROGERS, RICHARD KRESBACH,
ROCHELLE MOORE, AMY RISSEEUW,
JUDY ROBSON, JEANNE SANCHEZ-BELL,
CECILIA SCHLIEPP, TRAVIS THYSSEN,
CINDY BARBERA, RON BOONE, VERA
BOONE, EVANJELINA CLEERMAN,
SHEILA COCHRAN, MAXINE HOUGH,
CLARENCE JOHNSON, RICHARD LANGE,
and GLADYS MANZANET,

Plaintiffs,

TAMMY BALDWIN, GWENDOLYNNE
MOORE and RONALD KIND,

Intervenor Plaintiffs,

vs.

Members Of The Wisconsin Government
Accountability Board, Each Only In His Official
Capacity: MICHAEL BRENNAN, DAVID
DEININGER, GERALD NICHOL, THOMAS
CANE, THOMAS BARLAND, and TIMOTHY
VOCKE, and KEVIN KENNEDY, Director
And General Counsel For The Wisconsin
Government Accountability Board,,

Defendants.

F. JAMES SENSENBRENNER, JR., THOMAS
E. PETRI, PAUL D. RYAN, JR., REID J.
RIBBLE, and SEAN P. DUFFY,

Intervenor-Defendants.

Civil Action No. 11-CV-562
JPS-DPW-RMD

VOCES DE LA FRONTERA, INC., RAMIRO
VARA, OLGA VARA, JOSE PEREZ and
ERICA RAMIREZ,

Plaintiffs,

Members of the Wisconsin Government
Accountability Board, each only in his official
capacity: MICHAEL BRENNAN, DAVID
DEININGER, GERALD NICHOL, THOMAS
CANE, THOMAS BARLAND, and TIMOTHY
VOCKE, and KEVIN KENNEDY, Director and
General Counsel for the Wisconsin Government
Accountability Board,

Defendants.

Case No. 11-CV-1011
JPS-DPW-RMD

**MOTION FOR CLARIFICATION OF SCOPE OF ORDER OF FEBRUARY 16
RELATED TO TRIAL SUBPOENA OF JAMES R. TROUPIS, ESQ., AND FOR ORDER
RELATED TO WISCONSIN CODE OF PROFESSIONAL CONDUCT RULE 20:1.6 (5)**

Subpoenaed witness James R. Troupis, Esq., through counsel, respectfully requests clarification of the scope of this Court's February 16, 2012 Order as it relates to a trial subpoena issued by the Plaintiffs, served Friday night, February 17, 2012 on Attorney Troupis, and, as the Court may clarify, for an Order consistent with the Wisconsin Code of Professional Conduct Rule 20:1.6 (5) to allow for testimony of Attorney Troupis, as legal counsel. In support, Attorney Troupis states:

1. Attorney Troupis is an attorney, duly licensed by the State of Wisconsin, authorized to practice in numerous Courts, including this Court, the United States Supreme Court, the 7th, 4th and Federal Circuits, the Northern District of Illinois and Western District of Wisconsin.

2. Jeff Fitzgerald and Scott Fitzgerald (collectively "the Fitzgeralds") in their official capacities as Speaker of the Wisconsin House of Representatives and Majority Leader of the Wisconsin Senate, respectively, retained Troupis Law Office, LLC and Attorney Troupis in

2010 to represent them in connection with the Wisconsin Legislature's redistricting efforts. He continued in that capacity until the process was completed by passage and signing of reapportionment legislation for the State and Congressional offices.

3. As the record reflects, Attorney Troupis has not represented or participated in the defense of any party, third party or the Fitzgeralds in connection with this litigation. Attorney Troupis has been engaged throughout the Fall and Winter in a lengthy proceeding and jury trial in the United States District Court for the Western District of Wisconsin, *Promega Corporation v. Life Technologies et.al. Case # 10-CV-281*, ending in a jury verdict on Wednesday, February 15, 2012, and so has had no involvement in recent discovery matters (excepting only to answer a request for certain documents by Michael, Best & Friedrich, LLP) or other matters addressed by this Court.

4. Attorney Troupis was served at his residence with a trial subpoena on Friday, February 17, 2011 at 7:00 p.m. compelling him to attend trial on February 21, 2011 as a witness in this case. (See Exhibit 1 attached hereto.) At the time he was served, Attorney Troupis was preparing to leave on a vacation. Pursuant to that trial subpoena, Attorney Troupis has remained in the State in order to provide such testimony as the Court may direct.

5. Attorney Troupis has not been deposed as a witness in this action, and the first notice he had of potentially being called in this litigation was when he was served.

6. After being served, Attorney Troupis contacted counsel for the Government Accountability Board on Friday evening, February 17 to ask that they contact, Peter Earle, counsel for the Consolidated Plaintiffs and issuing counsel on the trial subpoena, to inform him that Attorney Troupis was planning on being out of town and to ask what that counsel needed in the way of testimony. Attorney Troupis was told that the counsel issuing the subpoena apparently

intended, without regard to Attorney Troupis prior plans, to demand he appear. Counsel was apparently interested in discussions Attorney Troupis had with the Mexican American Legal Defense Fund ("MALDEF"). (Attorney Troupis' contacts with MALDEF during the redistricting process have been known throughout this litigation as they were the subject of numerous depositions.) Attorney Troupis was not contacted at any time by the Plaintiffs prior to the February 17, 2012 subpoena with regard to MALDEF or any other matter in this litigation.

7. Attorney Troupis has not been authorized by the Fitzgeralds to reveal information related to his representation of them, nor has he been authorized to waive any attorney-client privilege on their behalf.

8. In light of the ethical issues raised for him when he is asked to provide testimony that would include otherwise confidential information, pursuant to the Wisconsin Code of Professional Responsibility, Attorney Troupis personally retained Attorney Donald Daugherty and the firm of Whyte Hirschboeck Dudek, S.C. on Sunday, February 18, 2012 to address those issues, and to represent him in these proceedings.

9. To the extent the Court believes that the testimony of Attorney Troupis is appropriate, he respectfully sought to facilitate that testimony by having his counsel contact Attorney Earle to seek a stipulation to designate the scope of his testimony in advance. (A true and correct copy of the proposed stipulation and related e-mail exchange between counsel is attached as Exhibit 2 hereto.) The purpose of the stipulation was to avoid the need for ongoing, serial objections to questions seeking otherwise confidential or privileged information. Although Attorney Troupis desires to cooperate and provide testimony as appropriate, he is ethically prohibited from disclosing confidential information absent a Court Order under SCR 20:1.6 (5).

10. As set forth in Exhibit 2 hereto, counsel for Consolidated Plaintiffs declined to accept the language of the proposed stipulation and offered the following language instead: “Plaintiffs may examine Troupis about his communications with the individuals identified in the documents ordered released by the Court regarding the subject matter contained in said documents.” However, Attorney Troupis does not believe that the proposed revision resolves his dilemma as it does not limit the scope of his testimony in any real way and does not disclose any specifics regarding what testimony is sought from him; rather, the Consolidated Plaintiffs seek testimony from Attorney Troupis related to any matter disclosed in any discovery document “ordered released by the Court” (without regard to when that document was disclosed, without regard to whether it was first disclosed on February 17 and without regard to any other limitation, even relevance) involving Attorney Troupis’ representation as legal counsel on redistricting matters for the Fitzgeralds.

11. Wisconsin Supreme Court Rule (“SCR”) 20:1.6 mandates that Attorney Troupis “shall not reveal information relating to the representation of a client unless the client gives informed consent, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in pars. (b) and (c).” SCR 20:1.6(c) provides that “A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary: ... (5) to comply with other law or a court order.”

12. It appears from the record that the Defendants, or third parties, produced certain documents as a result of this Court’s February 16, 2012 Order, dkt. # 166 (“February 16 Order”) that “reveal[s] information relating to the representation” Attorney Troupis provided, and that some of that information contains privileged communications or if discussed at trial would require Attorney Troupis to disclose certain privileged communications in his testimony.

13. The Supreme Court of Wisconsin in *State v. Meeks*, 263 Wis. 2d 794, 666 N.W.2d 859, 872 (2003) recognized the “ethical dilemma” created when a lawyer is subpoenaed to testify regarding confidential communications with his or her client without the client’s consent and cautioned that “[b]ecause of the importance of facilitating open and frank communications between attorney and client” the subpoenaing party “should first exhaust all investigatory powers which do not potentially violate the attorney-client privilege, before attempting to compel” an attorney to testify.

14. While a court may allow any attorney to testify where no other means exist to obtain relevant information sought, “the inquiry party must be very careful not to intrude into those conversations, no matter how many, in which the communications sought and received legal advice.” *New York v. Oneida Indian Nation of New York*, 2001 WL 1708804 at *5 (S.D.N.Y. 1996).

15. No court has ordered Attorney Troupis to reveal through trial testimony or otherwise any information related to the representation of his clients.

16. Notwithstanding the February 16 Order on the disclosure of documents, Attorney Troupis has a continuing legal and ethical obligation under SCR 20:1.6 to maintain the confidentiality of information relating to his representation of the Fitzgeralds.

17. The subpoena for Attorney Troupis’ appearance at trial contains no information about the scope of his expected testimony or any limitations on any area of inquiry.

18. Attorney Troupis desires to comply with his duty to testify as a witness while also fulfilling the ethical duties imposed upon him by Wisconsin Supreme Court Rules prohibiting disclosure of information about the representation of a client.

19. Attorney Troupis moves for an Order requiring the Consolidated Plaintiffs to designate the scope of his testimony, prior to that testimony being provided, so that the Court may then address, by Order, the matters required to be addressed pursuant to SCR 20:1.6 (5).

20. Attorney Troupis respectfully requests that the Order limit the testimony to (a) only those communications described within the documents produced that he had with MALDEF or other non-clients regarding Assembly Districts 8 & 9 and the related State Senate Districts; (b) that the Court enter an Order pursuant to SCR 20:1.6(5) directing Troupis to testify, to the extent required, about information related to those third party/non-client contacts that he may have had with his clients; and (c) that if the Court does not restrict the scope of testimony, that the Court determine the attorney-client privilege issue on a question-by-question basis.

21. To the extent testimony is required or allowed by this Court, counsel for the consolidated Plaintiffs has agreed to call Attorney Troupis on Tuesday afternoon, February 21 at approximately 1:00 p.m.

WHEREFORE, subpoenaed witness James R. Troupis, through counsel, respectfully requests that the Court clarify the extent to which its February 16 Order requires or allows his testimony in these proceedings, the Court enter such Protective Order or other relief as may be appropriate and that to the extent such testimony is allowed, that the Court limit the permissible scope of the witness examination in this action to:

(a) only those communications described within the documents produced that he had with MALDEF or other non-clients regarding Assembly Districts 8 & 9 and the related State Senate Districts;

(b) the Court enter an Order pursuant to SCR 20:1.6(5) directing Troupis to testify, to the extent required, about information related to those third party/non-client contacts that he may have had with his clients; and

(c) if the Court does not restrict the scope of testimony, that the Court determine the attorney-client privilege issue on a question-by-question basis.

DATED: February 20, 2012.

/s John B. Tuffnell

Donald A. Daugherty, Jr. SBN: 1017628

John B. Tuffnell SBN: 1047261

Attorneys for James R. Troupis and Troupis

Law Office LLC

Whyte Hirschboeck Dudek S.C.

555 East Wells Street

Suite 1900

Milwaukee, WI 53202

Telephone: 414-273-2100

Fax: 414-223-5000

Email: ddaugherty@whdlaw.com

**Issued by the
UNITED STATES DISTRICT COURT**

Eastern District of Wisconsin

Alvin Baldus, et. al.,
V.
Michael Brennan, et. al.,

SUBPOENA IN A CIVIL CASE

Case Number:¹ 2:11-cv-562 and 2:11-cv-1011

TO: James R. Troupis, Troupis Law Office, LLC,
8500 Greenway Blvd., Ste. 200
Middleton, Wisconsin 53562

- ☒ YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY United States District Court, Eastern District of Wisconsin Federal Courthouse 517 East Wisconsin, Ave. Milwaukee, Wisconsin 53202	COURTROOM Room 425
	DATE AND TIME 2/21/2012 10:00 am

- ☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME
----------------------------	----------------------

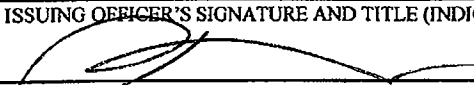

- ☐ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

PLACE	DATE AND TIME
--------------	----------------------

- ☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME
-----------------	----------------------

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rule of Civil Procedure 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)  Attorney for Consolidated Plaintiffs, 	DATE 2/17/2012
---	--------------------------

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER
 Peter G. Earle, Law Office of Peter Earle, LLC, Suite 300, 839 North Jefferson Street, Milwaukee, Wisconsin 53202
 (414) 276-1076

(See Federal Rule of Civil Procedure 45 (c), (d), and (e), on next page)

¹ If action is pending in district other than district of issuance, state district under case number.

PROOF OF SERVICE

DATE	PLACE
SERVED	
2/17/12	4726 Timber Lane Cross Plains, NJ
SERVED ON (PRINT NAME)	MANNER OF SERVICE
James Troupis	Hand delivered
SERVED BY (PRINT NAME)	TITLE
Beth Laper	

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on

2/17/12
DATEBETH LAPER
SIGNATURE OF SERVER3110 Kingsley Way
ADDRESS OF SERVER

Madison, WI

Federal Rule of Civil Procedure 45 (c), (d), and (e), as amended on December 1, 2007:

(c) PROTECTING A PERSON SUBJECT TO A SUBPOENA.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the issuing court must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information;
- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or
- (iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(d) DUTIES IN RESPONDING TO A SUBPOENA.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) CONTEMPT.

The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(i).

Cash Office Of Peter G. Parle, LLC Ph. 414-244-1075 830 S. Jefferson St. Ste. 300 Milwaukee, WI 53202		3468 2/17/12
Pay To the Order of <u>James Troupis</u>	\$ <u>142¹²/₁₀₀</u>	
<u>One Hundred Forty Two and 12/100</u>		
Associated Bank Subpoena - 2:11-cv-562 Witness and mileage fee		
⑆075900575⑆ 2173 109 07⑆ 3468		

From: Daugherty, Donald A. DAD (5443)
Sent: Monday, February 20, 2012 9:12 PM
To: Brier, Kathy J. KJB (5433)
Subject: FW: Stipulation-Troupis testimony (Draft to Earle).DOC

From: Daugherty, Donald A. DAD (5443)
Sent: Monday, February 20, 2012 8:24 PM
To: 'Peter Earle'
Cc: Jim Troupis; Douglas Poland; Tuffnell, John B. JBT (5416)
Subject: RE: Stipulation-Troupis testimony (Draft to Earle).DOC

Peter -- Thanks for the language. Unfortunately, we don't believe it provides any real limitation on the scope of our client's testimony tomorrow, and in any event, our client doesn't have authority to agree to the language. Would you be willing to agree to limit the scope of his testimony to his communications with MALDEF, as well as any non-privileged communications regarding AD 8 and 9? Please let us know. In the meanwhile, we will need to go ahead and file our motion requesting clarification from the Court. Thanks. Don

From: Peter Earle [mailto:peter@earle-law.com]
Sent: Monday, February 20, 2012 8:01 PM
To: Tuffnell, John B. JBT (5416)
Cc: Jim Troupis; Daugherty, Donald A. DAD (5443); Douglas Poland
Subject: Re: Stipulation-Troupis testimony (Draft to Earle).DOC

John and Don: I propose the following language for paragraph one: "Plaintiffs may examine Troupis about his communications with the individuals identified in the documents ordered released by the the Court regarding the subject matter contained in said documents." The advantage of this language is that it limits the scope of the resulting order to finite group of people and to a finite number of subjects, all of which have been determined by the Court to fall within the exception defined in the Court's orders. Please let me know if this proposed language is satisfactory. Peter

From: Tuffnell, John B. JBT (5416)
Sent: Monday, February 20, 2012 3:23 PM
To: peter@earle-law.com
Cc: Jim Troupis ; Daugherty, Donald A. DAD (5443)
Subject: Stipulation-Troupis testimony (Draft to Earle).DOC

Peter,

I work with Don Daugherty and represent Jim Troupis in connection with the subpoena you issued. I am following Don's conversation with you from this morning.

Attached is a proposed stipulation to address concerns we have that compelling Jim's testimony for trial runs counter to Wisconsin's ethical rules regarding preserving client information, as set forth in SCR 20:1.6. Because Jim was not deposed, and we have no opportunity to otherwise raise these legitimate ethical issues before trial, as we normally would do, we ask that you consider the attached stipulation.

Jim will agree to testify about his MALDEF communications, testimony that will be consistent with the

documents you already have.

Both you and Jim (and the Court) have an interest in an efficient examination. I also know you would not intentionally induce Jim to violate his ethical obligations under the Supreme Court rules. Given the unusual circumstances of the late request for Jim's testimony, something we know was done because you only received the documents on Thursday, we believe the best way to promote efficiency is to agree to a reasonable framework for the testimony. Please review the attached and call me to discuss.

Thank you.

John B. Tuffnell
Whyte Hirschboeck Dudek S.C.
555 East Wells Street Suite 1900
Milwaukee, Wisconsin 53202-3918

414-978-5416 (direct)
414-223-5000 (fax)

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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

ALVIN BALDUS, CARLENE BECHEN,
ELVIRA BUMPUS, RONALD BIENDSEIL,
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RIBBLE, and SEAN P. DUFFY,

Intervenor-Defendants.

Civil Action No. 11-CV-562
JPS-DPW-RMD

WHD/8435049.1
WHD/8435339.1

VOCES DE LA FRONTERA, INC., RAMIRO
VARA, OLGA VARA, JOSE PEREZ and
ERICA RAMIREZ,

Plaintiffs,

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CANE, THOMAS BARLAND, and TIMOTHY
VOCKE, and KEVIN KENNEDY, Director and
General Counsel for the Wisconsin Government
Accountability Board,

Defendants.

Case No. 11-CV-1011
JPS-DPW-RMD

STIPULATION AGREEMENT REGARDING TESTIMONY OF JAMES R. TROUPIS

The parties to this stipulation, (“Consolidated Plaintiffs”) and subpoenaed witness James R. Troupis (“Troupis”)(collectively “Parties”), through counsel, hereby agree to the following terms and conditions relating to the testimony of James R. Troupis in this action.

WHEREAS, James R. Troupis (“Troupis”) is a lawyer with expertise in election redistricting; and

WHEREAS, Troupis was retained by and represents Jeff Fitzgerald and Scott Fitzgerald (collectively “the Fitzgeralds”) in their official capacities as Speaker of the Wisconsin House of Representatives and Majority Leader of the Wisconsin Senate, respectively, in connection with the Wisconsin Legislature’s redistricting efforts; and

WHEREAS, plaintiffs issued a subpoena to Troupis on Friday, February 17, 2011 at 7:00 p.m. compelling him to attend trial on February 21, 2011 as a witness in this case; and

WHEREAS, Troupis has not been deposed as a witness or otherwise involved as

litigation counsel to any party or other witness in this litigation; and

WHEREAS, plaintiffs seek testimony from Troupis related to Troupis' representation as legal counsel on redistricting matters for the Fitzgeralds;; and

WHEREAS, Wisconsin Supreme Court Rule ("SCR") 20:1.6 states "A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in par. (b) and (c);" and

WHEREAS, certain documents were produced as a result of the Order of this Court dated February 16, 2012, dkt. # 166 ("February 16 Order) that "reveals information relating to the representation" Troupis provided and that the Fitzgeralds and Troupis believe contain privileged communications; and

WHEREAS, SCR 20:1.6(c)(5) states: A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary to comply with other law or a court order;" and

WHEREAS, no court has ordered Troupis to reveal any information; and

WHEREAS, notwithstanding the February 16 Order on the disclosure of documents, Troupis has a continuing legal and ethical obligation under SCR 20:1.6 to maintain the confidentiality of information relating to his representation of the Fitzgeralds; and

WHEREAS, the subpoena for Troupis' appearance at trial contains no information about the scope of his expected testimony or any limitations on any area of inquiry; and

WHEREAS, Troupis desires to comply with his duty to testify as a witness while

also fulfilling his duty as a lawyer to his clients; and

WHEREAS, Troupis and the Plaintiffs desire to promote judicial efficiency by (i) agreeing in advance on the scope of Troupis' testimony in this stipulation and ii) to requesting that this Court enter an appropriate Order, pursuant to SCR 20:1.6(5) directing that Troupis testify on those matters.

NOW THEREFORE, subject to the Court's appropriate SCR 20:1.6(5) Order, the undersigned parties agree to the following:

1. Plaintiffs may examine Troupis about his communication with and efforts to involve the Mexican-American Legal Defense and Educational Fund ("MALDEF") in the Wisconsin Legislature's redistricting effort, including communication between and among Troupis, MALDEF and MALDEF's representatives.
2. The Parties to this stipulation both believe that this could, and likely will result in testimony related to matters that are subject to Troupis' obligations under SCR 20 1.6 and may include otherwise confidential information as it is understood in SCR 20:1.6.
3. The Parties agree that Troupis cannot testify on any matter involving his representation of the Fitzgeralds without an express Order of the Court directing him to testify.
4. The Parties to this Stipulation do not wish to disrupt the flow of testimony with these privilege matters but instead wish to resolve the matter in advance of testimony.
5. The Parties to this Stipulation agree that this Stipulation shall not in any way affect the rights of the Defendants, the legislative leaders or Troupis to appeal or challenge the February 16 Order or the prior Orders of the Court concerning disclosures, and the parties acknowledge that this Stipulation flows from the Court's prior Orders;

6. Upon the entry of an Order so directing, Troupis will appear and respond to questions related to the topics noted in ¶ 1, above.

7. Nothing herein shall constitute or be considered a waiver by the client of such privileges as they may possess. Nothing herein shall be act in any way to expand the scope of testimony to be provided by Troupis beyond that described in ¶1.

DATED: _____, 2012.

_____/s_____
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Brandt, Karen J (15243)

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United States District Court

Eastern District of Wisconsin

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Case Name: Baldus et al v. Brennan et al
Case Number: 2:11-cv-00562-JPS-DPW-RMD
Filer: James Troupis
Document Number: 179

Docket Text:

MOTION to Clarify Scope of 2-16-12 Order Related to Trial Subpoena and for Order Related to Rule 20:1.6(5) by James Troupis. (Attachments: # (1) Exhibit 1, # (2) Exhibit 2)(Tuffnell, John)

2:11-cv-00562-JPS-DPW-RMD Notice has been electronically mailed to:

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